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SENATE

{ REPORT
106-277

AMENDING THE INDIAN EMPLOYMENT, TRAINING, AND RELATED SERVICES DEMONSTRATION ACT OF 1992, TO EMPHASIZE THE NEED FOR JOB CREATION ON INDIAN RESERVATIONS, AND FOR OTHER PURPOSES

MAY 3, 2000.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1509]

The Committee on Indian Affairs, to which was referred the bill (S. 1509) to amend the Indian Employment, Training, and Related Services Demonstration Act of 1992, to emphasize the need for job creation on Indian reservations, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of S. 1509 is to amend Public Law 102-477, the Indian Employment, Training, and Related Services Demonstration Act of 1992 (codified at 25 U.S.C. §§ 3401-3417, and hereinafter referred to as the “477 program”). Among other things, the amendments proposed in S. 1509 expand the programs eligible for inclusion in the 477 program, and emphasize the need for job creation on Indian reservations.

BACKGROUND

Throughout the 1970’s and 1980’s, Congress authorized a number of employment training programs to address the unemployment problem that existed throughout the nation. Within each of these programs, Congress reserved funds exclusively for and allocated funds directly to tribes pursuant to the federal government’s special trust relationship with tribes. When enacting these tribal-specific employment training programs, Congress intended to increase the economic self-sufficiency of tribal governments and their com-

munities. However, many tribes were not able to take advantage of the programs because of the great number of regulations, filing and reporting requirements required by each program. Additionally, the small amounts awarded under each grant relative to the significant time and paperwork burdens were often prohibitive and served to detract from the overall effectiveness of these programs. The 477 program was developed to provide tribes with a mechanism to take full advantage of the wide variety of employment training programs, while minimizing administrative time and costs, and by reducing federal reporting and paperwork requirements.

Since its enactment, the 477 program has become one of the few successful economic development programs in Indian country. The program was enacted to address the severe problems of unemployment and poverty faced by most Native American communities. The program permits tribal governments to consolidate formula funded employment, training and related programs into one streamlined, efficient plan designed to meet tribal specific employment needs.

Currently, thirty-nine (39) tribes and Alaska Native organizations participate in the 477 program, representing 211 federally recognized tribes. All of the tribes participating in the program report that they are providing more jobs and better quality services to tribal members while reducing paper work and related administrative costs.

The current 477 program authorizes the Secretary of the Department of Interior, in collaboration with the Secretaries of the Departments of Education, Health and Human Services, and Labor to review for approval tribal plans proposing to integrate formula funded employment, training and related services programs. Integration of these programs permits tribes to more efficiently administer employment training and related services and is designed to reduce unemployment in tribal communities, while serving the federal policy of Indian self-determination. A tribal plan must: identify programs to be integrated; describe a strategy identifying potential employment opportunities on and near the tribe's service area, and services to be provided; include a projected budget; identify tribal agencies involved in the delivery of services; identify necessary waivers; and be approved by the governing body of the tribe. Following consultation with other department heads, the Secretary is required to approve or reject the tribal plan within ninety (90) days after receipt of the tribe's plan. If disapproved, the tribe has an opportunity to amend its plan or petition for reconsideration.

According to the Bureau of Indian Affairs (BIA), as of April 19, 2000 more than \$38 million of federal funding had been pooled by participating agencies under the program. The record shows that the 477 program has been successful, and should be expanded and strengthened. An oversight hearing, held by the Senate Committee on Indian Affairs on May 13, 1997, revealed several concerns with the program's administration and certain limitations that prevented broad implementation of the program. Additionally, the implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. Law 104-193, has made successful implementation of the 477 program a high priority for tribal governments. Known as the "welfare reform" law, this initiative places

primary emphasis on securing and keeping gainful employment. Because the centerpiece of the legislation is work, the 477 program plays a critical role in helping tribes make the transition to an employment-oriented framework. S. 1509 was developed to specifically address those concerns.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. The title of the bill is the Indian Employment, Training and Related Services Demonstration Act Amendments of 1999.

Section 2. Findings, Purposes. This section recognizes that tribes participating in the 477 program have improved the quality of employment-related services delivered to their members while reducing administrative costs, paper work and time. The purpose of this Act is to improve the effectiveness of Indian employment, training, and related services consistent with the policies of self-determination and self-governance.

Section 3. Amendments to the Indian Employment, Training and Related Services Demonstration Act of 1992.

(b) Programs Affected. This section broadens the scope of programs that a tribe may choose to include in its 477 program, increasing flexibility and strengthening the service delivery capability of tribal governments. This amendment would allow both Indian adult and youth programs to be integrated under the 477 program. In addition, job creation activities are also eligible to participate in the program.

(c) Plan Review. This subsection amends Section 7 of Pub. Law 102-477 which currently states that the:

* * * Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act or those provisions of the statute from which the program involved derives its authority. * * *

Section 3(c) amends the sentence by adding the words “statutory requirement,” after the words “authority to waive any”. The intent of this amendment is to place tribal governments on par with state entities for which many statutes provide broad statutory waiver capability. Currently, there are programs that cannot be integrated into the 477 program because of certain statutory requirements. With the increased waiver authority, this amendment will broaden the number of programs that may be integrated into the 477 program.

It is not the Committee’s intent to vest the Secretary of the Interior with authority to waive statutory requirements, regulations, policies, or procedures that are within the authority of the Secretaries of other Departments. All waiver authority continues to be within the sole discretion of the Secretary of the affected department. The amended waiver authority in S. 1509 is intended to work in the same manner as the existing waiver provision and each Department will act on waivers involving its own programs.

The decisions on tribal waiver requests are then communicated to the tribes as part of the Secretary of the Interior's action in considering tribal plans.

(d) Plan Approval. Existing law requires the Secretary to permit tribal applicants to amend disapproved plans or to petition for reconsideration. This amendment would additionally direct the Secretary to reconsider disapproval of requested statutory waivers within the ninety (90) day limit. Thus, all affected Departments must complete their review of any waiver requests and notify the Department of Interior within this time frame.

(e) Job creation activities. S. 1509 strengthens the ability of tribes to use their resources to create jobs for Indians and Alaska Natives. The development of present and future workforce skills is frustrated by the absence of job opportunities.

This amendment would add language to section 9 of the Act which permits tribes to use a percentage of their 477 funds to create employment opportunities, including private sector training placement. The permitted percentage is either ten percent (10%) or a percentage based on the tribal community's unemployment rate up to twenty-five percent (25%), whichever is greater.

Section 4. Report on Expanding the Opportunities for Program Integration. Within a year of enactment of this legislation, the Interior Secretary, the Secretary of Health and Human Services and the Secretary of Labor, along with tribes and organizations participating in the 477 program, shall submit a report on the opportunities for expanding the 477 program, including the integration of human resources development and economic development programs. This report must contain a feasibility analysis regarding the establishment of Joint Funding Agreements for tribes to access and coordinate federal funds from all agencies for human resources development, physical infrastructure development, and economic development. The report shall recommend both specific programs or activities that might be integrated under the 477 program, and the removal of any possible statutory barriers that are impeding full implementation of the 477 program.

Section 5. Effective Date. This subsection requires that all amendments take effect upon enactment of this bill into law.

LEGISLATIVE HISTORY

S. 1509, the Indian Employment, Training and Related Services Demonstration Act Amendments of 1999, was introduced on August 5, 1999, by Senator Campbell. The bill was referred to the Committee on Indian Affairs. On March 29, 2000, the Committee on Indian Affairs convened a business meeting to consider S. 1509 and other measures that had been referred to it. The Committee favorably reported S. 1509 with amendments to the full Senate.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On March 29, 2000, the Committee on Indian Affairs, in an open business session, adopted S. 1509 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1509 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 12, 2000.

Hon. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1509, the Indian Employment, Training, and Related Services Demonstration Act Amendments of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette Keith.

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1509—Indian Employment, Training, and Related Services Demonstration Act Amendments of 1999

S. 1509 would make several technical corrections to the Indian Employment, Training, and Related Services Demonstration Act of 1992. That legislation allows tribes to consolidate funds received under various formula grant programs for employment, training, and education into a single demonstration project. CBO estimates that enacting S. 1509 would have no significant impact on the federal budget. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 1509 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

S. 1509 would expand the use of demonstration program funds and would specify the percentage of formula grant programs that could be used for training purposes. Based on information from the Bureau of Indian Affairs, CBO expects that implementing this legislation would not change the amounts authorized to be appropriated to the tribes for employment services. Therefore, we estimate that enacting S. 1509 would have no significant impact on the federal budget.

The CBO staff contact is Lanette Keith. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory paperwork impact that would be incurred in implementing the legislation. The Committee has concluded that enact-

ment of S. 1509 will create only de minimis regulatory or paper-work burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received no official communication from the Administration on the provisions of the bill.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set out in the accompanying Committee report. The Committee finds that enactment of S. 1509 will result in the following changes to 25 U.S.C. §§ 3401 et seq., with existing language which is to be deleted in brackets and new language to be added in italic:

25 U.S.C. § 3404

Programs affected.—The programs that may be integrated in a demonstration project under any such plan referred to in section 3403 of this title shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of [job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training.] *assisting Indian youth and adults to succeed in the work force, encouraging self-sufficiency, familiarizing Indian Youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities.*

25 U.S.C. § 3406

Plan review.—Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal [department] *agency* providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal [departmental] *agency* regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected [department] *agency* shall have the authority to waive any *statutory requirement*, regulation, policy, or procedure promulgated by that [department] *agency* that has been so identified by such tribal government or department, unless the Secretary of the affected [department] *agency* determines that such a waiver is inconsistent with the purposes of this chapter or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.

25 U.S.C. § 3407

Plan approval.—Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or dis-

approval of the plan *including any request for a waiver that is made as part of the plan submitted by the tribal government*. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval *including reconsidering the disapproval of any waiver requested by the Indian tribe*.

25 U.S.C. § 3408

Job creation activities authorized.—(a) *IN GENERAL*.—The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

(b) *JOB CREATION OPPORTUNITIES*.—

(1) *IN GENERAL*.—*Notwithstanding any other provisions of law, including any requirement of a program that is integrated under a plan under this Act, a tribal government may use a percentage of the funds made available under this Act (as determined under paragraph (2)) for the creation of employment opportunities, including private sector training placement under section 10.*

(2) *DETERMINATION OF PERCENTAGE*.—*The percentage of funds that a tribal government may use under this subsection is the greater of—*

(A) *the rate of unemployment in the service area of the tribe up to a maximum of 25 percent; or*

(B) *10 percent.*

(c) *LIMITATION*.—*The funds used for an expenditure described in subsection (a) may only include funds made available to the Indian tribe by a Federal agency under a statutory or administrative formula.*